proportion to their subscriptions, irrespective of date. *In re British Red Cross Balkan Fund*, [1914] 2 Ch. 419.

For a discussion of the principles involved, with particular reference to the bearing of the rule in *Clayton's Case* on the question, see NOTES, p. 193.

WAR — PRIZE — CAPTURE: RIGHTS OF NEUTRAL MORTGAGEES AND SHAREHOLDERS. — In a suit for the condemnation of a German steamship captured while flying the German flag by a British warship, claims were presented by neutral mortgagees and by British and neutral shareholders in the German company which owned the vessel. *Held*, that these claims will not be recognized. *The Marie Glaeser*, 137 L. T. J. 468, 49 L. J. 545 (Prize Court).

In time of war a vessel is often regarded as having a character distinct from that of its owners. Thus, under the Anglo-American doctrine which for purposes of maritime capture makes trade domicile in war rather than political nationality the test of enemy character, the ships of a citizen engaged in trade in enemy country, and *a fortiori* when the enterprise is incorporated there, are treated as enemy ships. *The Friendschaft*, 4 Wheat. (U. S.) 105. See *The Portland*, 3 C. Rob. 41, 42, 44; 2 WESTLAKE, INTERNATIONAL LAW, 2 ed., p. 164. Even where this trade domicile in war is not recognized, an increasing tendency to emphasize the nationality of the flag carried produces a like result through the personification of the vessel itself. See 2 WESTLAKE, INTERNATIONAL LAW, 2 ed., p. 169. The flag's lawful use is symbolical of a definite commitment to the protection of one nation. If such protection fails, the political character of its owner is rightly of no avail. *The Danckebaar Afrikaan*, 1 C. Rob. 107. In the principal case, therefore, the shareholders must lose on any theory. The rights of the mortgagees are also properly disregarded, as are the claims of all lienholders, for however slight may be their power to determine the vessel's flag, they have accepted it and enlisted its protection. *The Hampton*, 5 Wall. (U. S.) 372; *The Battle*, 6 Wall. (U. S.) 498; *The Nigretia*, Takahashi, International Law, p. 551; *The Tobago*, 5 C. Rob. 218. Possibly the most fundamental explanation of all is the vital policy against having a prospective prize snatched away because of an unsuspected lien. For otherwise there would be a dearth of captures.

WILLS — EXECUTION — ATTESTATION: WHAT IS ATTESTED UNDER STATUTE OF FRAUDS. — The testator, after signing the instrument, presented it to the attesting witnesses as his will, but kept it so folded that they had no opportunity to see his signature. The Massachusetts statute was similar to the Statute of Frauds, and provided that a will must be signed by the testator and "attested and subscribed in his presence by three or more competent witnesses." *Held*, that the will is not properly attested. *Nunn* v. *Ehlert*, 106 N. E. 163 (Mass.).

This decision settles the Massachusetts law in accord with a *dictum* delivered by Mr. Justice Gray. See *Chase* v. *Kittredge*, 11 All. (Mass.) 49, 63. Most authorities, however, in jurisdictions where statutes similar to the Statute of Frauds govern testamentary disposition, have reached the opposite result, on the ground that the statute does not require that the signature of the testator be attested, but merely that the will be attested as the testator's act. *Ellis* v. *Smith*, 1 Ves. Jr. 11; *White* v. *Trustees of the British Museum*, 6 Bing. 310; *Dougherty* v. *Crandall*, 168 Mich. 281, 134 N. W. 24. Under the Wills Act it is required that the signature be "made or acknowledged by the testator in the presence of two or more witnesses." 1 Vict. c. 26, § 9. With such a provision it seems clear that the signature must be attested, and accordingly it has been held that if the witnesses have no opportunity to see the signature, as for example, if it is covered by a blotter, the instrument is not properly executed. *In the Goods of Gunstan*, 7 P. D. 102. *Cf. Daintree* v.

Fasulo, 13 P. D. 67. To reach this same conclusion in the absence of such a provision is a desirable result, scarcely justified by previous interpretation of the Statute of Frauds, but founded upon the sound reason that in requiring the attesting of a will the statute meant that all essentials to a valid will be witnessed, including the testator's signature. See *Ellis* v. *Smith*, *supra*.

WILLS — MUTUAL WILLS — REVOCABILITY. — A husband and wife, whose property consisted chiefly of a joint tenancy in leaseholds, executed wills found by another court to be mutual. After the husband's death, the wife executed a new will altering her previous will. The plaintiffs propounded the later will and the defendants claimed under the earlier. *Held*, that the later will must be probated. *Walker* v. *Gaskill*, 49 L. J. 456 (Prob. Div.).

Where a will is the result of fraud the probate court has jurisdiction to set it aside, and equity will ordinarily not be called upon to give relief. *Case of Broderick's Will*, 21 Wall. (U. S.) 503; *Allen* v. *M'Pherson*, 1 H. L. Cas. 191. But where the will is made in violation of a promise to devise or to die intestate, it must be recognized as the will of the testator by the probate court. The remedy is then in equity. *Ridley* v. *Ridley*, 34 Beav. 478; *Kundinger* v. *Kundinger*, 150 Mich. 630, 114 N. W. 408; *Taylor* v. *Mitchell*, 87 Pa. 518; *Jones* v. *Abbott*, 228 Ill. 34, 81 N. E. 791. Equity cannot order a new will or cancel the old, and so the relief is not precisely specific performance. Nor is it exactly a constructive trust remedy, for the measure of damages is not the enrichment of the estate or its wrongful beneficiaries, but what the promisee would have received. Courts and text-books, however, use the language of both remedies. See *Bolman* v. *Overall*, 80 Ala. 451, 455, 2 So. 624, 626; *Burdine* v. *Burdine*, 98 Va. 515, 519, 36 S. E. 992, 993. See GARDNER, WILLS, p. 85 *et seq.* The finding that wills are in fact mutual is equivalent to the finding of a contract to make wills, and equity would therefore exercise this peculiar jurisdiction in the nature of specific performance in the principal case, if called upon. *Dufour* v. *Pereira*, 1 Dick. 419; *Bower* v. *Daniel*, 198 Mo. 289, 95 S. W. 347. See STORY, EQUITY JURISPRUDENCE, 13 ed., § 785; 1 JARMAN, WILLS, 6 Eng. ed., pp. 41–42. It is this jurisdiction which accounts for the loose expression that mutual wills are "irrevocable in equity." It should be noted, however, that some courts, on the facts, are as reluctant to find mutual wills as they are to find a simple contract to devise. *Lord Walpole* v. *Lord Orford*, 3 Ves. Jr. 402; *Edson* v. *Parsons*, 155 N. Y. 555, 50 N. E. 265; *Hamlin* v. *Stevens*, 177 N. Y. 39, 69 N. E. 118.

BOOK REVIEWS

THE MINIMUM WAGE. By Rome G. Brown. Minneapolis: The Review Publishing Company. 1914. pp. xv, 98.

This is a significant little volume. It is another illustration of the tendency to deal with constitutional questions realistically and not as though they were a jejune branch of metaphysics. Less than four years ago the New York Court of Appeals, after paying a passing tribute to the irrelevance of the economic and sociologic data with which the Workmen's Compensation Law was sought to be justified by the Wainwright Commission, turned to the "purely legal" phases of the controversy. Now Mr. Brown, one of the leaders of the